IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO. 885 OF 2003

The State of Maharashtra .. Appellant.

V/s.

Prakash Yeshwant Bomble & 7 others..Respondents.

Shri A.M. Shringarpure, A.P.P. for the Appellant/State

CORAM : S.B. MHASE &
ANOOP V.MOHTA, JJ.

DATE : 7TH DECEMBER, 2004.

P.C.

. Heard Mr. Shringarpure, A.P.P. for the appellant. The trial Court has acquitted the accused on three grounds, firstly that the prosecution has failed to prove that the prosecutrix belongs to Mahar community, as she has admitted and there is record to demonstrate that she has accepted Boudh Religion. Secondly the prosecution has failed to prove that the accused belongs to other community than the Scheduled Caste and Scheduled Tribes and thirdly, the accused had love with the prosecutrix. However, as she belongs to the Scheduled Caste, the family members of the accused were not ready to accept her as in-law in the family. However, because of the relations and love and the

promise to marry, the prosecurix had relations with the accused and thereby had showed consent.

2. So far as ground No.1 reflected from the Judgment, we find that the said ground is incorrect. Only because the person who is belonging to the scheduled caste is converted to the Boudh that would not amount to the change of status of the man. The presidential order which is amended since 1990 makes it clear that such persons are Scheduled Caste and Scheduled Tribes. However, so far as the ground No.2 and 3 are concerned on which the acquittal is passed, we are in agreement with the trial Court. The prosecution has not brought on record that the accused belongs to any advanced community other than the Scheduled Caste or Scheduled Tribes and apart from the main offence under section 376 of I.P.C., as per the prosecution, accused had love with the prosecutrix and in that situation he promised to marry and thus by consent, they had sexual relations. However, it is prosecution’s case that prosecutrix was not belonging to the caste of the accused and therefore, the marriage could not be materialised. In such circumstances, the prosecution has failed to prove that the promise to marry, which was

given to the prosecutrix in order to have consent for sexual relations was basically deceitful or fraud and whether that consent was obtained by fraud. However, no such evidence has been brought on record through out all the three reasons for acquittal . We do not agree with the first reason, still there are two other reasons and therefore, the view taken by the trial Court is a possible view to that extent and therefore, the leave to appeal is rejected.

[ANOOP V. MOHTA, J.] **[S.B.MHASE, J.]**

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